REMARKS

The Non-final Office Action mailed April 7, 2008, has been received and reviewed. Each of claims 1-6, 8, 11-18, 20, 22-30, 32-44, and 46-49 stands rejected. Claims 1, 13, 25, and 37 have been amended herein. Accordingly, claims 1-6, 8, 11-18, 20, 22-30, 32-44, and 46-49 remain pending. Care has been exercised to introduce no new subject matter. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 112

Claims 1-6 and 11-12 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) were alleged to contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites the limitation "encapsulating the data". The phrase was allegedly not in the Specification. As disused in the Examiner interview, the "encapsulation of the data into fundamental message objects" is recited in paragraph [0007] of the present application. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, first paragraph rejection of claims 1-6 and 11-12.

Rejections based on 35 U.S.C. § 103(a)

A. Applicable Authority.

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having

ordinary skill in the art to which said subject matter pertains." The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 at 1741, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) with approval)." *See also* MPEP § 2142. "[R]ejections on obviousness cannot be sustained with mere conclusory statements." *Id.* Thus, in order to establish a *prima facie* case of obviousness the Office must provide "a clear articulation of the reason(s) why the claimed invention would have been obvious" based on factual findings made while conducting the *Graham* factual inquires. *See* MPEP § 2143. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *Id.*

B. **Claims 1-6, 8 and 11-12 are not unpatentable over US Patent No. 6,875,053 in view of U.S. Patent No. 7,346,699.**

Claims 1-6, 8 and 11-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,857,053 to Bolik (hereafter "Bolik") in view of U.S. Patent No. 7,346,699 to Krause (hereafter "Krause"). Applicants respectfully disagree with the factual findings made by the Office regarding the differences between the claimed invention and prior art references. Further, Applicants have amended the claims to emphasize additional differences

between the claims and the cited references. Accordingly, Applicants respectfully traverse the rejection, as hereinafter set forth.

Independent claim 1, as amended, recites a system for managing the transmission of data from at least one data source to a remote destination. The transmission of the data is managed at the message-object layer without small-scale flow control at the transport layer. The system includes an input interface that receives data from at least one data source and a communication engine that encapsulates the data into one or more message objects, buffers the message objects prior to transmission, and facilitates transmission to a remote destination. The system provides for buffering the message objects at both ends of the transmission. Bolik, on the other hand, describes a system for keeping track of backed up data. *See* Bolik Abstract. Bolik tangentially discusses transferring data into the backup system. The data-transferring discussion in Bolik fails to describe several elements in claim 1. Krause transmits large amounts of data to multiple destinations during a multicast. *See* Krause Abstract. Krause also fails to describe these elements.

Specifically, claim 1 recites "the one or more message objects are buffered in an output message queue prior to transmission to the remote destination" and "wherein the one or more message objects are transmitted through the one or more connections to a remote destination including an input message queue for buffering the one or more message objects" (emphasis added). Thus, it is clear that buffering occurs in both an output queue on the sending side (pre-transmission) and an input message queue at the remote destination. Buffering messages in both output and input queues helps to facilitate the accommodation of slow links and varying characteristics of traffic both on the sender and receiver sides, while driving data transport to the greatest possible utilization. *See* paragraph [0020] in the as-filed application.

Further, the buffering is occurring at the message-object layer rather than the transport layer as in Krause. Bolik describes a transaction log at the remote destination to which backup objects may be written and then committed to the backup storage. *See* Bolik column 6, lines 30-37. The Bolik reference only describes, at best, a single buffering queue rather than two buffering queues. Accordingly, Bolik fails to describe either the "buffering in an output message queue" or "a remote destination including an input message queue." In other words, at best, buffering on only one side of a transmission to a remote destination is described in Bolik, rather than buffering on both sides of the transmission as is recited in claim 1. The Krause reference describes buffering on the receiving side, but not the destination side. The Krause reference also describes buffering at the data transport layer. *See* Krause at col. 20, ll. 59-62 (buffering units of work).

Further, the combination of references does not describe managing the transmission at a message-object layer without small-scale flow control at the transport layer, as recited in claim 1. The Krause reference describes managing the transmission by units of work. Units of work are the data packets that are actually transmitted. *See* Krause reference col. 11, ll. 20-35. The Bolik reference does not describe how the backup transmission is managed. Bolik focuses on keeping track of the backup documents. In Bolik, how the documents are transmitted to the backup storage is merely tangential to the disclosure.

Thus, Applicants respectfully suggest that the Office has not carried its burden of establishing a *prima facie* case of obviousness because the differences between claim 1 and the cited references are significant. Further, claims 2-6, 8 and 11-12 are allowable, at least by virtue of their dependency on claim 1. Accordingly, Applicants respectfully request the withdrawal of the 35 U.S.C § 103(a) rejection of claims 1-6, 8 and 11-12.

Rejections based on 35 U.S.C. § 102(e)

A. Applicable Authority.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdeggal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 2 USPQ 2d 1913, 1920 (Fed. Cir. 1989). *See also*, MPEP § 2131.

B. Claims 13-18, 20, 22-30, 32-44 and 46-49 are not anticipated by US Patent No. 6,875,053.

Claims 13-18, 20, 22-30, 32-44 and 46-49 were rejected under 35 U.S.C. § 102(e) as being anticipated by Bolik. As Bolik does not describe, either expressly or inherently, each and every element of the rejected claims, Applicant respectfully traverses the rejection as hereinafter set forth.

Claim 13, as amended, recites both "buffering the plurality of message objects in an output message queue prior to transmission to the remote destination" and "the remote destination includ[ing] an input message queue for buffering the plurality of message objects" (emphasis added). As described previously with reference to claim 1, Bolik does not describe both pre and post transmission queues for buffering messages. Also, Bolik does not describe "associating each of the data sources with at least one corresponding session," as recited in claim 13. Bolik describes transferring backup objects to a backup database, but data transfer sessions

between a data source and the backup database are not mentioned. *See* Bolik col. 6, ll. 1-45. Thus, Bolik does not describe associating each of the data sources with at least one corresponding session.

Further, Bolik does not describe managing the transmission of message objects at a message-object layer without small-scale flow control at the transport layer, as recited in claim 13. The Bolik reference does not describe how the backup transmission is managed. Bolik focuses on keeping track of the backup documents once they are transferred to the backup storage.

Accordingly, as Bolik fails to describe, either expressly or inherently, every element of independent claim 13, Applicant respectfully submits that Bolik does not anticipate claim 13. Claims 14-18, 20, and 22-24 depend, either directly or indirectly, on allowable claim 13. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102 rejection of claims 13-18, 20, and 22-24.

Claim 25, also recites both "buffering the plurality of message objects in an output message queue prior to transmission to the database" and "the database includ[ing] an input message queue for buffering the plurality of message objects" (emphasis added). As described previously with reference to claim 13, Bolik does not describe both pre and post transmission queues for buffering messages. Also for reasons similar those given with reference to claim 13, Bolik does not describe "managing the transmission of the message objects to the database at a message object level without small-scale flow control at the transport layer." Accordingly, as Bolik fails to describe, either expressly or inherently, every element of independent claim 25, Applicant respectfully submits that Bolik does not anticipate claim 25. Claims 26-30 and 32-36 depend, either directly or indirectly, on allowable claim 25.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102 rejection of claims 25-30 and 32-36.

Claim 37, recites "associating each of the data sources with at least one corresponding session." As described previously with reference to claim 13, Bolik does not describe associating each of the data sources with at least one corresponding session. Also for reasons given with reference to claim 13, Bolik does not describe "managing the transmission of the one or more message objects at a message object level without small-scale flow control at the transport layer." Accordingly, as Bolik fails to describe, either expressly or inherently, every element of independent claim 37, Applicant respectfully submits that Bolik does not anticipate claim 37. Claims 38-44 and 46-49 depend, either directly or indirectly, on allowable claim 37. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102 rejection of claims 37-44 and 46-49.

CONCLUSION

For at least the reasons stated above, claims 1-6, 8, 11-18, 20, 22-30, 32-44 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or johoward@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no additional fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

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